

NOT FOR PUBLICATION

DEC 10 2007

UNITED STATES COURT OF APPEALS

CATHY A. CATTERSON, CLERK
U.S. COURT OF APPEALS

FOR THE NINTH CIRCUIT

CHARLES E. MCMANAMA,

Plaintiff - Appellant,

v.

EDWARD J. JONES; et al.,

Defendants - Appellees.

No. 05-35972

D.C. No. CV-05-01074-JMS

MEMORANDUM*

Appeal from the United States District Court
for the District of Oregon
Anna J. Brown, District Judge, Presiding

Submitted December 3, 2007 **

Before: GOODWIN, WALLACE, and FISHER, Circuit Judges.

Charles E. McManama appeals pro se from the district court's order sua sponte dismissing his 42 U.S.C. § 1983 action alleging that an attorney and a state court judge violated his constitutional rights in connection with a state court civil

* This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3.

** The panel unanimously finds this case suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

action instituted by McManama. We have jurisdiction under 28 U.S.C. § 1291. We review de novo, *Arakaki v. Lingle*, 477 F.3d 1048, 1056 (9th Cir. 2007) (dismissal for failure to state a claim); *Harvey v. Waldron*, 210 F.3d 1008, 1011 (9th Cir. 2000) (judicial immunity), and we affirm.

The district court properly dismissed McManama's claims against Judge Jones because a state court judge is absolutely immune from damages actions under 42 U.S.C. § 1983 for acts committed within the course of his official duties. *See Olsen v. Idaho State Bd. of Medicine*, 363 F.3d 916, 922-23 (9th Cir. 2004); *see also Omar v. Sea-Land Service, Inc.*, 813 F.2d 986, 991 (9th Cir. 1987) ("A trial court may dismiss a claim sua sponte under Fed. R. Civ. P. 12(b)(6) . . . where the claimant cannot possibly win relief.").

The district court also properly dismissed McManama's claims against Bonaparte, a lawyer in private practice, because McManama failed to allege that Bonaparte was acting under color of state law. *See Simmons v. Sacramento County Sup. Ct.*, 318 F.3d 1156, 1161 (9th Cir. 2003) (holding that plaintiff cannot sue opposing counsel under section 1983 "because he is a lawyer in private practice who was not acting under color of state law[.]").

AFFIRMED.